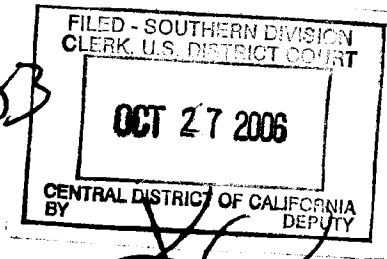


ORIGINAL

1 Lee A. Sherman, Esq. (SBN 172198)
Robert W. Thompson (SBN 106411)
2 Douglas A. Wright, Esq. (SBN 239112)
CALLAHAN, McCUNE & WILLIS, APLC
3 111 Fashion Lane
Tustin, California 92780-3397
4 Tel.: (714) 730-5700
Fax: (714) 730-1642
5 E-mail: Lee_Sherman@cmwlaw.net
Robert_Thompson@cmwlaw.net
6 Douglas_Wright@cmwlaw.net



7 [Additional Counsel listed on signature page]

8 Attorneys for Plaintiffs
JOSE L. ACOSTA, JR., ROBERT RANDALL, and BERTRAM ROBISON
9 individually, and on behalf of all other similarly situated

10
11 **UNITED STATES DISTRICT COURT**
12 **CENTRAL DISTRICT OF CALIFORNIA**
13 **SOUTHERN DIVISION**

14 JOSE L. ACOSTA, JR., ROBERT
RANDALL, and BERTRAM
15 ROBISON, individually, and on behalf
of all other similarly situated,

16 Plaintiffs,

17 v.

18 TRANS UNION, LLC, and DOES 1 to
19 10, Inclusive

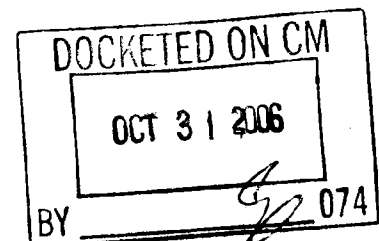
20 Defendants.

21 AND ALL RELATED CASES
22
23

Case No.: ~~SA~~ CV 06-5060 DOC (MLGx)

**NOTICE OF MOTION AND
MOTION TO DISQUALIFY
COUNSEL FOR PLAINTIFFS IN
THE RELATED WHITE AND
HERNANDEZ MATTERS;
MEMORANDUM OF LAW IN
SUPPORT THEREOF;
DECLARATIONS OF LEE A.
SHERMAN, PETER RECCHIA**

Date: November 20, 2006
Time: 8:30 a.m.
Place: Courtroom 9D
Judge: Hon. David O. Carter



1 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS
2 HEREIN:

3 PLEASE TAKE NOTICE that on November 20, 2006 at 8:30 a.m. in
4 Courtroom 9D of the above entitled United States District Court located at 411
5 West Fourth Street, Santa Ana, California, Plaintiffs JOSE L. ACOSTA, ROBERT
6 RANDALL, and BERTRAM ROBISON will and hereby do move for an order
7 disqualifying the law firms of Lieff, Cabraser Heimann & Bernstein, LLP, Caddell
8 & Chapman, and all other associated counsel including Daniel Wolf, Charles
9 Juntikka, Stuart Rossman, Charles Delbaum, Leonard Bennett, Matthew Erausan
10 and Mitchell Toups (hereinafter jointly referred to as the "Sobol/Caddell Group")
11 from serving as counsel on behalf of any party with regard to the approval process
12 for the proposed settlement of this and all related matters.¹

13 This motion is brought on the grounds that the Sobol/Caddell Group
14 engaged in improper and unauthorized ex parte communications with individuals
15 already engaged as expert witnesses by Plaintiffs in the above entitled matter as
16 well as the matter entitled *Pike v. Equifax Information Services, LLC* (Case No.
17 CV 05-1172 DOC (MLGx)). Further, the Sobol/Caddell Group continued the
18 unauthorized ex parte communications after learning that these experts had already
19 become involved with the Plaintiffs in the *Pike* and *Acosta* matters, which
20 ultimately resulted in these experts withdrawing their services from Plaintiffs in the
21 *Pike* and *Acosta* matters. As has been demonstrated in the recent motions to
22 consolidate and motions for appointment of interim lead counsel filed by the
23 Sobol/Caddell Group, they will stop at nothing to impede the ability of Plaintiffs in
24 *Pike* and *Acosta* to bring their settlement to the court for approval. The
25 unauthorized poisoning of *Pike* and *Acosta*'s experts is just another example.

26
27 ¹ Plaintiffs in the related *Pike v. Equifax Information Services, LLC* (Case No. CV
28 05-1172 DOC (MLGx)) join in the instant motion. See concurrently filed notice of

1 This motion is made pursuant to Federal Rules of Civil Procedure, Rule
2 26(b)(4) and pursuant to the inherent powers of the court to manage their own
3 proceedings and the control the conduct of those who appear before them, as
4 discussed in *Chambers v. Nasco, Inc.*, 501 U.S. 32, 43, 115 L. Ed. 2d 27 and
5 *Erickson v. Newmar Corp.* 87 F.3d 298 (9th Cir. 1996). The parties to this motion
6 have met and conferred in accordance with Local Rule 7-3 on October 5, 2006.

7 This motion shall be based on the attached memorandum of law in support
8 thereof, the declarations of Lee A. Sherman and Peter Recchia filed and served
9 herewith and upon such other oral or documentary evidence as may be submitted
10 in connection herewith.

11 **DATED: OCTOBER 26, 2006 CALLAHAN, MCCUNE & WILLIS APLC**

12
13 By: 

14 LEE A. SHERMAN, ESQ.
15 Attorney for JOSE L. ACOSTA, JR.,
16 ROBERT RANDALL, and
17 BERTRAM ROBISON individually,
18 and on behalf of all other similarly
19 situated
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joinder.

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1 **I. INTRODUCTION**

2 From the moment the proposed settlement of this case and the related *Pike*
3 matter were disclosed, the Sobol/Caddell Group has engaged in an unabashed
4 campaign to impede the ability of Pike and Acosta to bring the settlement to the
5 Court for purposes of approval. Among other tactics employed by the
6 Sobol/Caddell group, they have sought to consolidate the *Acosta* and *Pike* matters
7 in such a manner as to interfere with the settlement, which was denied by this
8 Court. They have sought improperly and prematurely to be appointed interim class
9 counsel so as to give them the exclusive ability to control settlement negotiations
10 on behalf of the putative class (again, which was denied by this Court in the
11 Equifax litigation) and they have also improperly and without authorization
12 contacted and poisoned expert witnesses already engaged by Acosta and Pike
13 causing these experts to withdraw their services from Acosta and Pike. Such
14 tactics are prohibited pursuant to Rule 26(b)(4) and warrant the disqualification of
15 the Sobol/Caddell Group from further participation in this litigation.

16 **II SUMMARY OF PERTINENT FACTS**

17 **A. Experts Ralph Mabey and Elizabeth Warren**

18 On August 11, 2006, the parties to the *Acosta* matter reached an agreement
19 on the Memorandum of Understanding for settlement of the *Acosta* matter, which
20 ultimately became the basis for settlement of the *Pike* matter as well. As this Court
21 knows by now, the Memorandum of Understanding was the result of months of
22 negotiations and five mediations sessions between the parties. Three days later, on
23 August 14, 2006, counsel for Plaintiffs in the *Acosta* and *Pike* matters, contacted
24 retired United States Bankruptcy Judge Ralph Mabey to inquire as to whether he
25 was qualified and willing to serve as an expert on behalf of Acosta for purposes of
26 evaluating and rendering an opinion regarding the value and fairness of the
27 settlement reached in *Acosta*.

1 Lee A. Sherman (hereinafter "Sherman"), counsel on behalf of Acosta and
2 Pike, spoke with Judge Mabey by telephone on August 14th and discussed the facts
3 of the case, the terms of the settlement, the nature of the negotiations, possible
4 objectors and other matters regarding the case. Dec. Sherman, ¶ 3. Judge Mabey
5 expressed significant interest in serving as an expert in the matter and followed up
6 the conversation with an e-mail to Sherman that stated among other things:

7 "Lee,

8 It was good to talk to you yesterday. *I do believe you have effected a*
9 *sea change in bankruptcy-related credit reporting. ...*" (Emphasis
10 added.) (See August 15, 2006 e-mail from Mabey to Sherman, a true
11 copy of which is attached hereto as Exhibit A.)

12 Judge Mabey went on to attach a brief bio and ask for the parties in interest for
13 purposes of running a conflicts check. (See Exhibit A)

14 Over the course of the next few days, Sherman and Judge Mabey
15 corresponded by e-mail and telephone including Sherman providing to Judge
16 Mabey the identities of the parties in interest, the identity of the parties in the
17 White/Hernandez cases, the identities of counsel in the White/Hernandez cases,
18 information and theories regarding the potential objectors and the Memorandum of
19 Understanding. Dec. Sherman, ¶ 5. In response, Judge Mabey confirmed that he
20 did not have any conflicts and that his billing rate would be \$750.00 per hour for
21 working on this matter. Id.

22 During the course of the telephonic conversations between Judge Mabey and
23 Sherman, Judge Mabey suggested that Acosta also retain Elizabeth Warren of
24 Harvard Law School as an additional expert. Judge Mabey indicated that he had a
25 good working relationship with Ms. Warren and that he felt she would be a
26 valuable addition. Dec. Sherman, ¶ 6. So, Sherman called Ms. Warren and spoke
27 with her about, among other things, the case, the settlement, the possibility of
28 adding the *Pike* case to the settlement, possible objectors and theories and her

1 services as an expert with regard to reviewing the settlement for the case. Dec.
2 Sherman, ¶ 7. That call took place on or around August 16, 2006. Id.

3 On August 17, 2006, Ms. Warren followed up on her call with Sherman and
4 contacted Sherman by e-mail explaining that she had contacted Judge Mabey,
5 discussed the case and the settlement with him and believed that the settlement
6 looked "*quite promising*," particularly with regard to the injunctive measures.
7 (See August 17, 2006, e-mail from Warren to Sherman, a true copy of which is
8 attached hereto as Exhibit B.) Sherman responded on August 18, 2006, inquiring
9 as to whether Ms. Warren had reviewed the term sheet with Judge Mabey and,
10 believing that Ms. Warren was now on board, asked for a C.V. and a rate sheet.
11 (See August 18, 2006, e-mail from Sherman to Warren, a true copy of which is
12 attached hereto as Exhibit C.) Warren then responded on August 22, 2006, by
13 acknowledging that she had seen the Memorandum of Understanding, attached her
14 C.V. and quoted her hourly rate at \$850.00 per hour. (See August 22, 2006, e-mail
15 from Ms. Warren to Sherman, a true copy of which is attached hereto as Exhibit D)
16 At this point, Acosta believed Ms. Warren to be a retained expert. Furthermore, at
17 no time over the next ten days did Ms. Warren express any reservations about the
18 settlement or otherwise express any desire not to serve as Acosta's expert in this
19 matter. Dec. Sherman, ¶ 11.

20 However, late in the afternoon on September 4, 2006, without warning, Ms.
21 Warren sent an e-mail to Sherman advising that while she applauded the efforts to
22 get the credit reporting agencies to change their practices, she did not think she
23 should serve as Acosta's expert in the matter. However, she did not give any
24 reason or specifics or otherwise mention in the e-mail that she had discussed the
25 settlement with anyone other than Sherman and Judge Mabey. (See September 4,
26 2006, e-mail from Warren to Sherman, a true copy of which is attached hereto as
27 Exhibit E) Upon receipt of this e-mail on the morning of September 5th, Sherman
28 immediately responded by calling Ms. Warren, but was unable to speak with her

1 and left a message asking for clarification and a call back. Dec. Sherman, ¶ 13.
2 Sherman also sent an e-mail to Ms. Warren expressing curiosity regarding the
3 sudden change of heart and again asked for a chance to speak with her about it.
4 (See September 5, 2006, e-mail from Sherman to Warren, a true copy of which is
5 attached hereto as Exhibit F)

6 Ms. Warren did not call back, so Sherman called Judge Mabey since it was
7 Judge Mabey that had suggested Ms. Warren and since he indicated that he had a
8 good rapport with her. Dec. Sherman, ¶ 15. To Sherman's shock, Judge Mabey
9 indicated that Ms. Warren had advised him that she had been approached about
10 this litigation by friends working with the NCLC², disclosed that she had been
11 discussing the matter with the Acosta plaintiffs, discussed the matter with the
12 NCLC attorneys anyway and based on her discussions with them had decided to
13 withdraw her services from the Acosta plaintiffs. Id. Ms. Warren confirmed as
14 much when she finally responded to Sherman by e-mail after close of business on
15 September 6th. In particular, Ms. Warren's September 6th e-mails states:

16 "I had a call from friends working with the National Consumer Law
17 Center. They didn't know I had talked with you, and they wanted me
18 to talk with me [sic] about being their expert. Their concerns about
19 the settlement, along with the high regard I have for the NCLC, make
20 me too uneasy to commit to you as an expert." (See September 6,
21 2006, e-mail from Warren to Sherman, a true copy of which is
22 attached hereto as Exhibit G)

23 In response to Ms. Warren's e-mail, Sherman responded noting that while
24 Ms. Warren had confirmed that she was now not willing to serve as Acosta's
25 expert (despite having reviewed materials, provided a C.V., quoted a billing rate

26
27 ² The NCLC refers to the National Consumer Law Center which employs Charles
28 Delbaum and Stuart Rossman who are part of the Sobol/Caddell Group and serve

1 and discussed the matter with Sherman), she was not clear about her response to
 2 the NCLC and their inquiry about retaining her. (See September 6, 2006, e-mail
 3 from Sherman to Warren, a true copy of which is attached hereto as Exhibit H)
 4 Ultimately, Ms. Warren indicated that she believed herself free to assist the
 5 Sobol/Caddell Group if she so chose and so, over the course of the next week,
 6 Warren and Sherman exchanged additional e-mails with each setting forth their
 7 positions on this matter. (See September 14, 2006, e-mail string back and forth
 8 between Warren and Sherman, a true copy of which is attached hereto as Exhibit I)
 9 Sherman and Ms. Warren have had no contact since and Acosta currently does not
 10 know whether the Sobol/Caddell Group intend to try and use her as an expert in
 11 this case or use any information they may have gained from her.³ Dec. Sherman, ¶
 12 19.

13 Notably, in addition to poisoning the relationship between Pike and Acosta
 14 and Ms. Warren, the Sobol/Caddell Group's improper and unauthorized ex parte
 15 communications with her also poisoned Acosta's relationship with Judge Mabey.
 16 Namely, as part of the aforementioned call with Judge Mabey on September 5th,
 17 Judge Mabey, at that time, indicated that based on his working relationship with
 18 Ms. Warren, he now felt uncomfortable serving as Acosta's expert despite no
 19 change in position regarding the settlement. Dec. Sherman, ¶ 20. Judge Mabey
 20 sadly confirmed as much in an e-mail to Sherman on September 6th, which reads:

21 "Lee,

22 ***For personal reasons only***, I will be unable to act as an expert witness
 23 in this matter and therefore decline this engagement. ..." (Emphasis
 24 added.) (See September 6, 2006, e-mail from Mabey to Sherman, a
 25 true copy of which is attached hereto as Exhibit J)

26
 27 as Plaintiffs' counsel in the White and Hernandez matters.

28 ³ Acosta would certainly object to her involvement in this process if any party

1 Although Sherman called Judge Mabey to discuss this e-mail, Judge Mabey
2 maintained his position and also withdrew his services from Acosta as a result of
3 the ex parte communications by the Sobol/Caddell Group with Ms. Warren.

4 **B. Expert Evan Hendricks**

5 As this Court is aware, Plaintiff Acosta filed his initial case against Trans
6 Union back in May of 2003, well over three years ago. During the course of the
7 litigation of the *Acosta* matter, Peter Recchia (hereinafter "Recchia") retained Evan
8 Hendricks (hereinafter "Hendricks") as an expert witness on behalf of Acosta and,
9 in fact, had already paid him \$500 for services rendered in the *Acosta* matter
10 several months ago.⁴ Dec. Recchia, ¶ 3. Notably, the retention of Hendricks by
11 Acosta dates back to at least March of 2006, some 6 months before Hendricks was
12 tampered with by the Sobol/Caddell group. *Id.* (See also Invoice date March 8,
13 2006 attached hereto as Exhibit K).

14 As such, on August 14, 2006, and after the parties in the *Acosta* matter
15 reached a settlement agreement and signed the Memorandum of Understanding,
16 Recchia's office again contacted Hendricks regarding the settlement. Dec.
17 Recchia, ¶ 4. At that time, it was Acosta's understanding that Hendricks was to
18 continue serving as an expert with respect to the settlement. *Id.* The next day, on
19 August 15, 2006, Hendricks responded stating he was "on vacation" but requested
20 that Recchia "forward [the] memo of understanding..." Hendricks apparently
21 understood his retention and the potential need for urgency as he advised Recchia's
22 office that "if the deadline is a ways off, then send it to my PO Box, as I'll be back
23 8/24; if the deadline is tight, make sure it arrives by Monday..." (See e-mail string
24 from Hendricks to Recchia's employee Greg Sullivan, a true copy of which is
25

26 should seek to introduce her opinion.

27 ⁴ In addition to the *Acosta* matter, Hendricks served as expert witness on behalf of
28 Recchia's client in the matter entitled *Dennis Pike v. Equifax Information Services*,
Orange County Superior Court Case No. 03CC10991.

1 attached hereto as Exhibit L) Thereafter, in accordance with Hendrick's request,
2 Recchia sent the Memorandum of Understanding and other pertinent information
3 to Hendricks. Dec Recchia, ¶ 6. On August 17, 2006, Recchia's office again
4 contacted Hendricks indicating that Sherman was the lead attorney on the case and
5 inquired as to his availability to discuss the matter with Sherman. (See Exhibit L)
6 On that same day, Evan Hendricks responded and provided his availability to
7 discuss the matter. (See Exhibit L) On August 29, 2006, Hendricks again e-
8 mailed Recchia's office and requested that Recchia pay \$500 for "a short affidavit
9 or declaration [he] did earlier in the year" on the *Acosta* matter. (See Exhibit L;
10 See also Invoice attachment, a true copy of which is attached hereto as Exhibit K)
11 Recchia paid the \$500 due to Hendricks. Dec. Recchia, ¶ 8.

12 On September 2, 2006, Hendricks again suggested an understanding of his
13 retention by Acosta when he contacted Recchia's office and inquired as to the
14 status of the *Acosta* settlement. In his e-mail, Hendricks stated there are
15 **"'professional' 'plaintiff objectors' that bottom feed on class settlements, so let**
16 **me consult early on to avoid pitfalls."** (See Exhibit L) Thereafter, Recchia made
17 arrangements for Hendricks to travel to Southern California to attend the
18 September 14, 2006, mediation with Justice Trotter, although in the end, Acosta
19 decided that it was not necessary for Hendricks to attend. See Declaration of Peter
20 Recchia, ¶ 9; Dec. Sherman, ¶ 22.

21 A few weeks later, on October 2, 2006, Michael Caddell, of the
22 Sobol/Caddell group, e-mailed a letter to Sherman wherein Caddell admitted for
23 the first time contacting Hendricks and that he had worked with Hendricks for
24 "several years." (See Caddell letter dated October 2, 2006, a true and correct copy
25 of which is attached hereto as Exhibit M) Critically, Caddell admitted that
26 Hendricks **"advised [Caddell] that he had done two discrete projects for [the]**
27 **team on Pike and Acosta."** However, despite Hendricks' express statement that he
28 had worked on *Acosta* and *Pike*, Caddell apparently continued to pursue Hendricks

1 as “an expert in the *White/Hernandez* cases against Experian” and, in fact, retained
2 him as an expert. (See Exhibit M) Sherman sent a letter in response to Caddell’s
3 letter clarifying Plaintiffs’ position with respect to Evan Hendricks as Acosta’s
4 expert witness. (See Sherman letter dated October 4, 2006 attached as Exhibit N)

5 On October 3, 2006, after learning this information, Recchia contacted
6 Hendricks regarding Caddell’s correspondence. (See October 3, 2006, e-mail from
7 Recchia to Hendricks, a true copy of which is attached hereto as Exhibit O)
8 Recchia then also contacted Hendricks via telephone. During that conversation,
9 Hendricks confirmed several things, including (1) that he and Recchia had
10 previously discussed the *Acosta* matter and he was familiar with the case; (2) that
11 he had received the \$500 payment for work he had previously completed on the
12 *Acosta* matter; (3) that he and Recchia had talked about him being retained as an
13 expert for the *Acosta* settlement; (4) that Hendricks was previously scheduled to
14 travel to Southern California to participate in the September 14, 2006, global
15 mediation with Justice Trotter, and most importantly, (5) ***that Hendricks admitted***
16 ***that Caddell had expressed his “concerns” about the Acosta settlement when***
17 ***Caddell and Hendricks spoke.*** Dec. Recchia, ¶ 10. In response, Recchia
18 reiterated his position that Acosta had already hired Hendricks as an expert on the
19 *Acosta* and *Pike* matters, that the Sobol/Caddell group had already stated their
20 position as adverse to the *Acosta* settlement and as such, Recchia requested that
21 Hendricks disavow his involvement with the Sobol/Caddell group. Dec. Recchia,
22 ¶ 11. On October 5, 2006, Hendricks e-mailed Recchia and informed him that he
23 would not disavow his involvement with the Sobol/Caddell group and would
24 continue to work on the Experian case. (See October 5, 2006, e-mail from
25 Hendricks to Recchia, a true copy of which is attached hereto as Exhibit P) As a
26 result, the relationship between Hendricks and Acosta was severed.

27 **C. The Meet and Confer Attempt**

28 On October 5, 2006, counsel in the *Acosta* and *Pike* matters conducted a

1 phone conference with Sobol/Caddell group in order to meet and confer with
2 respect to the issues raised in this motion. During the course of that conversation,
3 Sherman informed Sobol, Caddell and others in the Sobol/Caddell group that
4 Acosta was aware of their ex parte communications with certain expert witnesses,
5 including Elizabeth Warren and Evan Hendricks. Dec. Sherman, ¶ 25.
6 Additionally, the Sobol/Caddell group also acknowledged during the call that on a
7 previous occasion and well before September 14, 2006 mediation, Sherman made
8 certain statements in previous conference calls alluding to the experts he planned
9 to use, although he did not mention them by name. Also, during the call, Sherman
10 advised the Sobol/Caddell group that their conduct caused three experts to
11 withdraw their services from Acosta and Pike. Dec. Sherman, ¶ 26. As such,
12 Sherman requested that the Sobol/Caddell team withdraw as counsel in the related
13 cases, but they declined thus making this motion necessary.⁵

14 **III. FEDERAL RULE OF CIVIL PROCEDURE 26(b)(4) PROHIBITS**
15 **EX PARTE COMMUNICATIONS WITH AN OPPOSING**
16 **PARTY'S EXPERT**

17 Federal Rules of Civil Procedure Rule 26(b)(4) provides specific ways by
18 which discovery may be obtained from the opposing party's expert witnesses. So,
19 as noted by the 9th Circuit Court of Appeals, "[s]ince existing rules of civil
20 procedure carefully provide for limited and controlled discovery of an opposing
21 party's expert witnesses, all other forms of contact are impliedly prohibited."
22 *Erickson v. Newmar Corp.* 87 F.3d 298, 301 (9th Cir. 1996). Accordingly, "an
23 attorney risks disqualification and professional discipline if he or she has ex parte
24

25 ⁵ The Sobol/Caddell group suggested that the experts in question be deposed as to
26 these issues. However, Sherman advised that under the circumstances Acosta
27 believes the well is poisoned. Consequently, and in light of the e-mails attached
28 hereto, Acosta informed the Sobol/Caddell group that he would proceed with his
motion. Dec. Sherman ¶ 27.

1 contact with an opposing expert.” Schwarzer, et al., Cal. Practice Guide: *Federal*
 2 *Civil Procedure Before Trial* (The Rutter Guide) 11:470 (2005).

3 The Sobol/Caddell group not only had unauthorized contacts with Acosta’s
 4 experts, they did it *twice* resulting in the loss of three of Acosta’s experts. The
 5 Sobol/Caddell group has gone to great lengths to show that they oppose the *Acosta*
 6 settlement, so Acosta’s experts were clearly opposing. Moreover, any claim that
 7 the contact was innocuous because the Sobol/Caddell group did not know at the
 8 time that Ms. Warren and Hendricks were Acosta’s experts would also be
 9 disingenuous in light of the fact that the Sobol/Caddell group *continued* the ex
 10 parte contacts with both Ms. Warren and Hendricks after their relationship with
 11 Acosta was disclosed. See Exhibit M and Exhibit G. Therefore, the Sobol/Caddell
 12 group is in violation of Federal Rules of Civil Procedure Rule 26(b)(4) and the 9th
 13 Circuit holding in *Erickson v. Newmar, Corp.*

14 **IV. THE COMMUNICATION AND INTERFERENCE BY THE**
 15 **SOBOL/CADDELL GROUP WITH PIKE AND ACOSTA’S**
 16 **EXPERT WITNESSES WARRANTS DISQUALIFICATION OF**
 17 **THOSE FIRMS FROM THESE MATTERS**

18 “Federal courts have the inherent powers to manage their own proceedings
 19 and to control the conduct of those who appear before them.” *Id.* (citing *Chambers*
 20 *v. Nasco, Inc.*, 501 U.S. 32, 43, 115 L. Ed. 2d 27.). When a claim such as witness
 21 tampering is raised, the “District judges have an arsenal of sanctions they can
 22 impose for unethical behavior ... includ[ing] monetary sanctions, contempt and the
 23 disqualification of counsel.” *Id.* at 44-45. Critically, “[t]he courts, as well as the
 24 bar, have a responsibility to maintain public confidence in the legal profession”
 25 which “means that a court may disqualify an attorney for not only acting
 26 improperly but also for failing to avoid the appearance of impropriety.” *Id.* (citing
 27 *Gas-A-Tron of Ariz. V. Union Oil Co.*, 534 F.2d 1322 (9th Cir.) *cert. denied sub*
 28 *nom. Shell Oil Co. v. Gas-A-Tron of Ariz.*, 429 U.S. 861, 50 L. Ed. 2d 139. Here,

1 the Sobol/Caddell Group's witness tampering warrants sanctions, specifically
2 disqualification as counsel in the pending matters for several reasons.

3 First, the intention of the Sobol/Caddell team seemingly was to interfere
4 with witnesses in the *Pike* and *Acosta* matters and disrupt the approval process for
5 the settlements reached in those matters. There is no dispute that Ms. Warren and
6 Judge Mabey were in communication with Sherman and both expressed great
7 interest in participating in the settlement. There is also no dispute that subsequent
8 to these conversations, Ms. Warren was contacted by members of the
9 Sobol/Caddell team, specifically the National Consumer Law Center ("NCLC").
10 Moreover, there is no dispute that after advising the NCLC of her contact with
11 Acosta and further communicating with the NCLC, Ms. Warren informed Sherman
12 that she no longer wished to participate as an expert witness. Unbelievably, Ms.
13 Warren informed Sherman that although the NCLC "didn't know [she] had talked
14 with [Sherman]", she could no longer participate with Sherman on the *Acosta*
15 matter due to the alleged "concerns [of the NCLC] about the settlement, along with
16 the high regard [she has] for the NCLC". Whether the NCLC specifically
17 requested Ms. Warren not to participate with the *Acosta* plaintiffs, or utilized other
18 influence to convince her to disavow her involvement, the fact remains that the
19 NCLC's contact with Ms. Warren caused her to cease all involvement with the
20 *Acosta* matter.

21 The second circumstance involved the Sobol/Caddell team's contact with
22 **another** expert witness of Pike and Acosta, i.e., Hendricks. Hendricks was already
23 working with counsel in the *Pike* and *Acosta* matters and had actually worked as an
24 expert on the *Acosta* matter. Incredibly, Caddell freely admits that Hendricks
25 advised him that "he had done two discrete projects for [the] team on *Pike* and
26 *Acosta*." Despite this knowledge, Caddell still sought to retain Hendricks as an
27 expert witness in a related matter. In reality, knowing his own adverse position to
28 the *Acosta* settlement, as soon as Caddell discovered that Hendricks had conducted

1 work on the *Pike* and *Acosta* matters, he should have ceased any further contact
2 with Hendricks. Yet, Caddell continued and, in fact, exacerbated the problem by
3 retaining Hendricks as an expert for pending White/Hernandez matter against
4 Experian.

5 These circumstances are similar to *Erickson v. Newmar Corp.* matter. In
6 *Erickson*, the defense counsel hired one of plaintiff's experts to provide assistance
7 in an unrelated matter. A dispute arose between the parties with respect to the
8 expert witness, and the expert witness resigned prior to trial. Although plaintiff
9 raised the claim of witness tampering prior to trial, the district court did not impose
10 any discipline on defense counsel. The Court of Appeal reversed and instructed,
11 among other things, the district court to impose appropriate sanctions and
12 disciplinary action upon defense counsel for witness tampering, which prevented
13 the plaintiff from receiving a fair trial. Citing, *Burke v. Vose*, 847 F. Supp. 256,
14 263 n. 33 (D. R.I. 1993), the court stated that "[w]itness tampering like perjured
15 testimony tends to subvert the entire judicial process and its principle function of
16 ascertainment of the truth." See *Erickson v. Newmar Corp.* 87 F.3d 298 (9th Cir.
17 1996).

18 Here, if Caddell and others such as Len Bennett regularly utilize Evan
19 Hendricks as an expert witness, as Caddell claims in his letter, Hendricks may be
20 subject to their influence. So, even if direct pressure was not applied to Hendricks
21 to conduct no further work on the *Pike* and *Acosta* matter, the implication certainly
22 exists. Regardless, it is apparent that once the Sobol/Caddell group learned that
23 these experts were working with Acosta, the intention of the Sobol/Caddell group
24 was to interfere with Pike and Acosta's ability to proceed to settlement approval.
25 In fact, Caddell's contact with Hendricks caused a rupture in the working
26 relationship between Hendricks and the counsel in the *Pike* and *Acosta* matters.

27 Finally, public policy supports the disqualification of the Sobol/Caddell
28 group. As stated above, witness tampering subverts the entire judicial process. As

1 such, the court maintains a responsibility to maintain public confidence in the legal
2 profession – including disqualifying attorneys for not only acting improperly, but
3 also for failing to avoid the appearance of impropriety. While one occurrence of
4 witness tampering can be viewed as an accident, two occurrences of witness
5 tampering is a pattern.

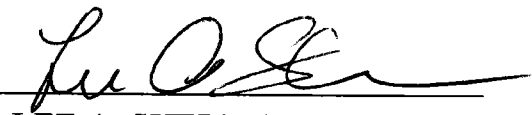
6 **V. CONCLUSION**

7 Based on the foregoing, Plaintiffs Jose L. Acosta, Jr., Robert Randall and
8 Bertram Robison respectfully request the court disqualify Lieff, Cabraser Heimann
9 & Bernstein, LLP, Caddell & Chapman and all associated counsel from serving as
10 counsel on behalf of any party with regard to the approval/objection process for the
11 proposed settlement of this and all related matters.

12 **DATED: OCTOBER 27, 2006**

CALLAHAN MCCUNE & WILLIS APLC

13
14 By:



15 LEE A. SHERMAN, ESQ.

16 Attorney for the Plaintiffs and on
17 behalf of all others similarly situated

18 Peter L. Recchia, Esq. (SBN 77857)
**LAW OFFICES OF PETER L.
RECCHIA**

19 1605 E. 4th Street, Ste. 250
20 Santa Ana, CA 92701

21 Tel: (714) 541-2858

22 Fax: (714) 541-6880

23 E-mail: Attnyrecchia@aol.com

24 Gino P. Pietro, Esq. (SBN 129582)

**LAW OFFICES OF GINO
PIETRO**

25 1605 E. 4th Street, Ste. 250
26 Santa Ana, CA 92701

27 Tel.: (714) 542-5004

28 Fax: (714) 542-0815

E-mail: Pietrolaw@sbcglobal.net

1 Lee A. Sherman, Esq. (SBN 172198)
Robert W. Thompson (SBN 106411)
2 Douglas A. Wright, Esq. (SBN 239112)
CALLAHAN, McCUNE & WILLIS, APLC
3 111 Fashion Lane
Tustin, California 92780-3397
4 Tel.: (714) 730-5700
Fax: (714) 730-1642
5 E-mail: Lee_Sherman@cmwlaw.net
Douglas_Wright@cmwlaw.net

6 Peter L. Recchia, Esq. (SBN 77857)
7 **LAW OFFICES OF PETER L. RECCHIA**
1605 E. 4th Street, Ste. 250
8 Santa Ana, CA 92701
Tel: (714) 541-2858
9 Fax: (714) 541-6880
E-mail: Attnyrecchia@aol.com

10 Gino P. Pietro, Esq. (SBN 129582)
11 **LAW OFFICES OF GINO PIETRO**
1605 E. 4th Street, Ste. 250
12 Santa Ana, CA 92701
Tel.: (714) 542-5004
13 Fax: (714) 542-0815
E-mail: Pietrolaw@sbcglobal.net

14 Attorneys for JOSE L. ACOSTA, JR., ROBERT RANDALL, and BERTRAM
15 ROBISON individually, and on behalf of all other similarly situated

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**
19

20 JOSE L. ACOSTA, JR., ROBERT
21 RANDALL, and BERTRAM
22 ROBISON, individually, and on behalf
of all other similarly situated,

23 Plaintiffs,

24 v.

25 TRANS UNION, LLC, and DOES 1 to
26 10, Inclusive

27 Defendants.

28 AND ALL RELATED CASES

) Case No.: SA CV 06-5060 DOC (MLGx)

) **DECLARATIONS OF LEE A.**
) **SHERMAN IN SUPPORT OF**
) **MOTION TO DISQUALIFY**
) **COUNSEL FOR PLAINTIFFS IN**
) **THE RELATED WHITE AND**
) **HERNANDEZ MATTERS**

) Date: November 20, 2006
) Time: 8:30 a.m.
) Place: Courtroom 9D
) Judge: Hon. David O. Carter

1
2 I, Lee A. Sherman, declare as follows:

3 1. I am an attorney at law duly admitted to practice before all courts of the
4 State of California and am one of the attorneys of record for plaintiffs in the above-
5 entitled actions *Acosta v. Trans Union, LLC* and *Pike v. Equifax Information*
6 *System, LLC*.

7 2. The matters asserted herein are based on my own personal knowledge
8 and if called upon to testify, I could and would competently testify thereto.

9 3. On August, 14, 2006, I spoke with Judge Mabey by telephone and asked
10 if he was willing to serve as an expert for Acosta with regard to rendering an
11 opinion as to the fairness of the settlement. During the conversation, we discussed
12 the facts of the case, the terms of the settlement, the nature of the negotiations,
13 possible objectors and theories and other matters regarding the case.

14 4. Attached hereto as Exhibit A is a true and correct copy of the August 15,
15 2006 e-mail addressed to me from Judge Mabey.

16 5. Over the course of the next few days, Judge Mabey and I corresponded
17 by e-mail and telephone. In those communications, I provided Judge Mabey the
18 identities of the parties in interest, the identity of the parties in the
19 White/Hernandez cases, the identities of counsel in the White/Hernandez cases,
20 information and theories regarding the potential objectors and the Memorandum of
21 Understanding. In response, Judge Mabey confirmed his interest, that he did not
22 have any conflicts to prevent him from working with us and that his billing rate
23 would be \$750.00 per hour for working on this matter.

24 6. In addition, during the course of the telephonic conversations between
25 Judge Mabey and me, Judge Mabey suggested that Acosta also retain Elizabeth
26 Warren of Harvard Law School as an additional expert. Judge Mabey indicated
27 that he had a good working relationship with Ms. Warren and that he felt she
28 would be a valuable addition.

1 7. So, on or about August 16, 2006, I called Ms. Warren and spoke with her
2 about, among other things, the case, the settlement, the possibility of adding the
3 *Pike* case to the settlement, possible objectors and theories and her services as an
4 expert with regard to reviewing the settlement for the case.

5 8. Attached hereto as Exhibit B is a true and correct copy of the August 17,
6 2006, e-mail addressed to me from Ms. Warren.

7 9. Attached hereto as Exhibit C is a true and correct copy of the August 18,
8 2006, e-mail from me to Ms. Warren.

9 10. Attached hereto as Exhibit D is a true and correct copy of the August 22,
10 2006, e-mail addressed to me from Ms. Warren.

11 11. As of August 22, 2006, I believed Ms. Warren to be a retained expert on
12 behalf of Acosta. Moreover, at no time over the next ten days did Warren express
13 any reservations about the settlement or otherwise express any desire not to serve
14 as Acosta's expert in this matter.

15 12. Attached hereto as Exhibit E is a true and correct copy of the See
16 September 4, 2006, e-mail addressed to me from Ms. Warren wherein she
17 withdraws her services. I had no notice from Ms. Warren that she had spoken with
18 the NCLC or that this e-mail was coming.

19 13. Upon receipt of the September 4, 2006, e-mail on the morning of
20 September 5th, I immediately responded by calling Ms. Warren, but was unable to
21 speak with her and left a message asking for clarification and a call back.

22 14. Attached hereto as Exhibit F is a true and correct copy of the September
23 5, 2006, e-mail from me to Warren, which also sought clarification of her decision.

24 15. Ms. Warren did not call back, so I called Judge Mabey since it was Judge
25 Mabey that had suggested Ms. Warren and since he indicated that he had a good
26 rapport with her. To my shock, Judge Mabey indicated that Ms. Warren had
27 advised him that she had been approached about this litigation by friends working
28 with the NCLC, disclosed that she had been discussing the matter with the Acosta

1 plaintiffs, discussed the matter with the NCLC attorneys anyway and based on her
2 discussions with them had decided to withdraw her services from the Acosta
3 plaintiffs.

4 16. Attached hereto as Exhibit G is a true and correct copy of the September
5 6, 2006, e-mail addressed to me from Warren.

6 17. Attached hereto as Exhibit H is a true and correct copy of the September
7 6, 2006, e-mail from me to Warren.

8 18. Attached hereto as Exhibit I is a true and correct copy of the September
9 14, 2006, e-mail string back and forth between Warren and myself.

10 19. I have had no contact with Ms. Warren since the September 14, 2006, e-
11 mail exchange and Acosta currently does not know whether the Sobol/Caddell
12 Group intend to try and use her as an expert in this case or use any information
13 they may have gained from her

14 20. During my conversation with Judge Mabey on September 5th, he
15 indicated that based on his working relationship with Ms. Warren, he now felt
16 uncomfortable serving as Acosta's expert despite no change in position regarding
17 the settlement.

18 21. Attached hereto as Exhibit J is a true and correct copy of the September
19 6, 2006, e-mail addressed to me from Judge Mabey stating that for personal
20 reasons only, he was declining to server as Acosta's expert.

21 22. I learned prior to the September 14, 2006 global mediation that Recchia
22 had made arrangements for Hendricks to appear at the mediation. However, after
23 discussing it, we (the Acosta team) decided it was not necessary.

24 23. Attached hereto as Exhibit M is a true and correct copy of the Caddell
25 letter dated October 2, 2006.

26 24. Attached hereto as Exhibit N is a true and correct copy of my letter to
27 Caddell dated October 4, 2006.

28 25. On October 5, 2006, counsel in the *Acosta* and *Pike* matters conducted a

1 phone conference with counsel for the *White* and *Hernandez* matters in order to
2 meet and confer with respect to the issues raised in this motion. During the course
3 of that conversation, I informed Sobol, Caddell and others in the Sobol/Caddell
4 group that Acosta was aware of their ex parte communications with certain expert
5 witnesses, including Elizabeth Warren and Evan Hendricks.

6 26. During that October 5, 2006 call, the Sobol/Caddell group acknowledged
7 that on a previous occasion and well before September 14, 2006 mediation, that I
8 had made certain statements in previous conference calls alluding to the experts
9 Acosta planned to use, although I did not mention them by name. Also, during the
10 call, I advised the Sobol/Caddell group that their conduct caused three experts to
11 disavow their services from Acosta and Pike.

12 27. During the October 5, 2006 call, the Sobol/Caddell group suggested that
13 the experts in question be deposed as to these issues. However, I advised that
14 under the circumstances I believed the well has been poisoned. I informed the
15 Sobol/Caddell group that I would proceed with this motion.

16 I declare under penalty of perjury, under the laws of the State of California,
17 that the foregoing is true and correct.

18 Executed this 27th day of October, 2006 at Tustin, California.

19
20 
21 LEE A. SHERMAN, Declarant
22
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24
25
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28

1 Lee A. Sherman, Esq. (SBN 172198)
Robert W. Thompson (SBN 106411)
2 Douglas A. Wright, Esq. (SBN 239112)
CALLAHAN, McCUNE & WILLIS, APLC
3 111 Fashion Lane
Tustin, California 92780-3397
4 Tel.: (714) 730-5700
Fax: (714) 730-1642
5 E-mail: Lee_Sherman@cmwlaw.net
Douglas_Wright@cmwlaw.net

6 Peter L. Recchia, Esq. (SBN 77857)
7 **LAW OFFICES OF PETER L. RECCHIA**
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9 Fax: (714) 541-6880
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10 Gino P. Pietro, Esq. (SBN 129582)
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Tel.: (714) 542-5004
13 Fax: (714) 542-0815
E-mail: Pietrolaw@sbcglobal.net

14 JOSE L. ACOSTA, JR., ROBERT RANDALL, and BERTRAM ROBISON
15 individually, and on behalf of all other similarly situated

16 **UNITED STATES DISTRICT COURT**
17 **CENTRAL DISTRICT OF CALIFORNIA**
18 **SOUTHERN DIVISION**
19

20 JOSE L. ACOSTA, JR., ROBERT
RANDALL, and BERTRAM
21 ROBISON, individually, and on behalf
of all other similarly situated,

22 Plaintiffs,

23 v.

24 TRANS UNION, LLC, and DOES 1 to
25 10, Inclusive

26 Defendants.

27 **AND ALL RELATED CASES**
28

Case No.: SA CV 06-5060 DOC (MLGx)

**DECLARATION OF PETER
RECCHIA IN SUPPORT OF
MOTION TO DISQUALIFY
COUNSEL FOR PLAINTIFFS IN
THE RELATED *WHITE* AND
HERNANDEZ MATTERS**

Date: November 20, 2006
Time: 8:30 a.m.
Place: Courtroom 9D
Judge: Hon. David O. Carter

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I, Peter Recchia, declare as follows:

1. I am an attorney at law duly admitted to practice before all courts of the State of California and am one of the attorneys of record for plaintiffs in the above-entitled actions *Acosta v. Trans Union, LLC* and *Pike v. Equifax Information System, LLC*.

2. The matters asserted herein are based on my own personal knowledge and if called upon to testify, I could and would competently testify thereto.

3. During the course of the litigation of the *Acosta* matter, I retained Evan Hendricks (hereinafter "Hendricks") as an expert witness on behalf of Acosta. Moreover, I have already paid him \$500 for services rendered in the *Acosta* matter. I retained Hendricks several months ago and he had performed work on the case as far back as March of 2006, several months before Caddell contacted him.

4. On August 14, 2006 and after the parties in the *Acosta* matter reached a settlement agreement and signed the Memorandum of Understanding, my office again contacted Hendricks regarding the settlement. At that time, it was my understanding that Hendricks was to continue serving as an expert with respect to the settlement. I communicated that to him as well.

5. Attached hereto as Exhibit L is a true and correct copy of e-mail string between Hendricks and my employee Greg Sullivan related to these matters.

6. In accordance with Hendrick's request, I sent the Memorandum of Understanding and other pertinent information regarding the Acosta settlement to Hendricks for his review.

7. Attached hereto as Exhibit K is a true and correct copy of the March 8, 2006, invoice from Evan Hendricks for certain work completed on the *Acosta v. Trans Union* matter.

8. In further efforts to facilitate Hendricks' work with us on the Acosta settlement, I made arrangements for Hendricks to travel to Southern California to

1 attend the September 14, 2006 global mediation with Justice Trotter. However, in
2 the end, my team decided that it was not necessary for Hendricks to attend.

3 9. Attached hereto as Exhibit O is a true and correct copy of the October 3,
4 2006, e-mail from me to Hendricks.

5 10. On October 3, 2006, I also contacted Hendricks via telephone. During
6 that conversation, Hendricks confirmed several things to me, including (1) that he
7 and I had previously discussed the *Acosta* matter and he was familiar with the case;
8 (2) that he had received the \$500 payment for work he had previously completed
9 on the *Acosta* matter; (3) that he and I had previously talked about him being
10 retained as an expert for the *Acosta* settlement; (4) that Hendricks was previously
11 scheduled to travel to Southern California to participate in the September 14, 2006,
12 global mediation with Justice Trotter, and importantly, (5) that Hendricks admitted
13 to me that Caddell had expressed his "concerns" about the settlement when
14 Caddell and Hendricks spoke.

15 11. In response, I reiterated to Hendricks my position that my team had
16 already hired him as an expert on the *Acosta* and *Pike* matters, that the
17 Sobol/Caddell group had already stated their position as adverse to the *Acosta*
18 settlement and I therefore requested that Hendricks disavow his involvement with
19 the Sobol/Caddell team. However, Hendricks would not.

20 12. Attached hereto as Exhibit P is a true and correct copy of the October 5,
21 2006, e-mail addressed to me from Hendricks.

22 I declare under penalty of perjury, under the laws of the State of California,
23 that the foregoing is true and correct.

24 Executed this 27th day of October, 2006 at Santa Ana, California.

25 
26 PETER L. RECCHIA, Declarant
27
28

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EXHIBIT A

Legal Tabs Co. 1-800-322-3022


Recycled  Stock # EXA-5-B

EXHIBIT A

Lee A. Sherman

From: Mabey, Ralph R. [RMabey@Stutman.com]
Sent: Tuesday, August 15, 2006 11:32 AM
To: Lee A. Sherman
Cc: Weatherly, Carol
Subject: Possible Spam:TransUnion Settlement

Lee,

It was good to talk to you yesterday. I do believe you have effected a sea change in bankruptcy-related credit reporting.

Attached is a very brief bio.

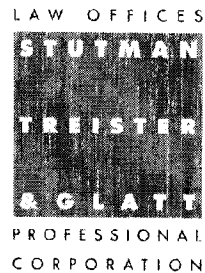
If you would like me to conduct a conflicts check, kindly give me the relevant parties in interest.

Ralph

Ralph R. Mabey
Stutman, Treister & Glatt, P.C.
185 South State Street
Suite 1300
Salt Lake City, Utah 84111-1537
801-257-7976 (Salt Lake City)
310-228-5720 (Los Angeles)

This Internet e-mail contains confidential information which is intended only for the addressee and which may be privileged under applicable law. Do not read, copy or disseminate it if you are not the addressee. If you have received this message in error, please notify the sender immediately and delete it. Thank you.

10/27/2006



is pleased to announce that

RALPH R. MABEY

has joined the firm as senior of counsel

You may contact Mr. Mabey at:

Stutman, Treister & Glatt, P.C.
185 South State Street
Suite 1300
Salt Lake City, UT 84111-1537
Direct Dial: 801-257-7976
Facsimile: 866-763-0412
rmabey@stutman.com
www.stutman.com

Ralph R. Mabey received his law degree from Columbia University where he served on the Board of Editors of the Columbia Law Review. He served with distinction as a United States Bankruptcy Judge from 1979 to 1983 and his judicial opinions have been cited frequently by courts and scholars.

Mr. Mabey is the immediate past Chair of the American College of Bankruptcy. He previously served as an appointee of the Chief Justice of the United States to the U.S. Judicial Conference's Advisory Committee on the Bankruptcy Rules. He has also served as the managing editor of the Norton Bankruptcy Law Adviser, on the Editorial Advisory Board of the American Bankruptcy Law Journal and currently serves as a contributing author to Collier on Bankruptcy.

Mr. Mabey is a member of the National Bankruptcy Conference's Executive Committee, the American Law Institute and the American Bar Association's Select Advisory Committee on Business Reorganization (SABRE). He teaches bankruptcy-related subjects at the J. Reuben Clark Law School, Brigham Young University.

Mr. Mabey's service in complex workout, bankruptcy, reorganization and litigation matters includes: A.H. Robins Company (as examiner with expanded powers); Dow Corning (as counsel for certain bondholders); Columbia Gas System (as equity committee counsel); Federated Department Stores (as counsel for the official pre-merger bondholders committee); TWA (as counsel for the pilots); American Airlines (as counsel for the pilots); Enron (as special counsel for the debtor); Cajun Electric Power Cooperative (as chapter 11 trustee); Boston Chicken (as an expert witness); and At Home/Excite (as an expert witness).

Courts, parties and the Department of Justice (U.S. Trustee Program) have appointed Mr. Mabey to serve as mediator, arbitrator, examiner or trustee in Alaska, Arizona, California, Louisiana, Michigan, New York, Texas, Utah, Virginia and Washington, D.C.

Mr. Mabey is a member of the New York and Utah Bars.

EXHIBIT B

Legal Tabs Co. 1-800-322-3022


Recycled  Stock # EXA-5-B

EXHIBIT B

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Thursday, August 17, 2006 8:52 PM
To: Lee A. Sherman
Subject: Trans Union settlement

Mr. Sherman,

I spoke with Ralph Mabey today about the case. He and I agree that the settlement looks quite promising, particularly in the injunctive relief you have worked out with Trans Union. Ralph is going to look into the case a bit deeper, and then he and I will talk again. I'd like to know more.

I hope this email will serve as a temporary response. I'm planning to go to Legoland for the next two days with two quite special young ladies, and then I'll be flying back to Cambridge early next week. Perhaps we can talk again next week after Ralph and I have had another chance to visit.

ew

EXHIBIT C

Legal Tabs Co. 1-800-322-3022


Recycled  Stock # EXA-5-B

EXHIBIT C

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Tuesday, August 22, 2006 6:00 PM
To: Lee A. Sherman
Subject: RE: Trans Union settlement



Warren CV July
2006.doc (121 K...

Lee,

Please call me Elizabeth.

Yes, Ralph sent me the Memo of Understanding. I hope to talk with him again soon.

Attached is my current cv. I bill my time at \$850 an hour.

ew

At 10:15 AM 8/18/2006, you wrote:

>Thank you for the response and please call me Lee. I'm not sure
>whether your e-mail means that you have seen the Memo of Understanding
>(the term
>sheet) that I sent to Ralph or not, but if not, he has it now (and some
>more details) and he can certainly share that with you. Please do call
>me after you've had a chance to speak further with Ralph or if you
>simply have any additional questions you wish to discuss. I would also
>like to get your cv and rate sheet when you get a chance. In the
>meantime, enjoy Legoland and all its wonders. I have been there with my
>own two special young ladies on a few occasions.

>

>-----Original Message-----

>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
>Sent: Thursday, August 17, 2006 8:52 PM
>To: Lee A. Sherman
>Subject: Trans Union settlement

>

>

>Mr. Sherman,

>

>I spoke with Ralph Mabey today about the case. He and I agree that the
>settlement looks quite promising, particularly in the injunctive relief
>you have worked out with Trans Union. Ralph is going to look into the
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>bit deeper, and then he and I will talk again. I'd like to know more.

>

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>ladies, and
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>talk

>again next week after Ralph and I have had another chance to visit.

>

>ew

EXHIBIT D

Legal Tabs Co. 1-800-322-3022


Recycled  Stock # EXA-5-B

EXHIBIT D

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Tuesday, August 22, 2006 6:00 PM
To: Lee A. Sherman
Subject: RE: Trans Union settlement



Warren CV July
2006.doc (121 K...

Lee,

Please call me Elizabeth.

Yes, Ralph sent me the Memo of Understanding. I hope to talk with him again soon.

Attached is my current cv. I bill my time at \$850 an hour.

ew

At 10:15 AM 8/18/2006, you wrote:

>Thank you for the response and please call me Lee. I'm not sure
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>more details) and he can certainly share that with you. Please do call
>me after you've had a chance to speak further with Ralph or if you
>simply have any additional questions you wish to discuss. I would also
>like to get your cv and rate sheet when you get a chance. In the
>meantime, enjoy Legoland and all its wonders. I have been there with my
>own two special young ladies on a few occasions.

>
>-----Original Message-----

>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
>Sent: Thursday, August 17, 2006 8:52 PM
>To: Lee A. Sherman
>Subject: Trans Union settlement

>
>
>Mr. Sherman,

>
>I spoke with Ralph Mabey today about the case. He and I agree that the
>settlement looks quite promising, particularly in the injunctive relief
>you have worked out with Trans Union. Ralph is going to look into the
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>bit deeper, and then he and I will talk again. I'd like to know more.

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>go to Legoland for the next two days with two quite special young
>ladies, and
>then I'll be flying back to Cambridge early next week. Perhaps we can
>talk
>again next week after Ralph and I have had another chance to visit.

>
>ew

EXHIBIT E

EXHIBIT E

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Monday, September 04, 2006 5:49 PM
To: Lee A. Sherman
Cc: rmabey@stutman.com
Subject: class action

Lee,

I appreciate your invitation to join you as an expert in the pending litigation with the credit reporting agencies. It appears that the agencies have been in flagrant violation of the law, and I applaud any effort to get them to change their practices. I think, however, that I should not serve as your expert. I don't think I could be as supportive of the settlement as you would need.

Perhaps we'll have another chance to work together in the future.

Elizabeth Warren

EXHIBIT F

Legal Tabs Co. 1-800-322-3022


Recycled  Stock # EXA-5-B

EXHIBIT F



Lee A. Sherman

From: Lee A. Sherman
Sent: Tuesday, September 05, 2006 7:14 AM
To: 'Elizabeth Warren'
Subject: RE: class action

Dr. Warren:

I just called and spoke with your assistant about this, but could you give me a call regarding your message when you get a chance. I am curious as to your decision and also about thoughts you have concerning my settlement.

I appreciate your assistance.

Lee Sherman

-----Original Message-----

From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
Sent: Monday, September 04, 2006 5:49 PM
To: Lee A. Sherman
Cc: rmabey@stutman.com
Subject: class action

Lee,

I appreciate your invitation to join you as an expert in the pending litigation with the credit reporting agencies. It appears that the agencies have been in flagrant violation of the law, and I applaud any effort to get them to change their practices. I think, however, that I should not serve as your expert. I don't think I could be as supportive of the settlement as you would need.

Perhaps we'll have another chance to work together in the future.

Elizabeth Warren

EXHIBIT G

Legal Tabs Co. 1-800-322-3022

Recycled  Stock #EXA-5-B

EXHIBIT G

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Tuesday, September 05, 2006 6:10 PM
To: Lee A. Sherman
Subject: RE: class action

Lee,

I'm sorry, but we've just started classes, so things are pretty hectic right now.

I had a call from friends working with the National Consumer Law Center. They didn't know I had talked with you, and they wanted me to talk with me about being their expert. Their concerns about the settlement, along with the high regard I have for the NCLC, makes me too uneasy to commit to you as an expert.

I wanted you to know right away so that you would be wasting time waiting for me.

ew

At 11:14 AM 9/5/2006, you wrote:

>Dr. Warren:

>

>I just called and spoke with your assistant about this, but could you
>give me a call regarding your message when you get a chance. I am
>curious as to your decision and also about thoughts you have concerning
>my settlement.

>

>I appreciate your assistance.

>

>Lee Sherman

>

>-----Original Message-----

>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]

>Sent: Monday, September 04, 2006 5:49 PM

>To: Lee A. Sherman

>Cc: rmabey@stutman.com

>Subject: class action

>

>

>Lee,

>

>I appreciate your invitation to join you as an expert in the pending
>litigation with the credit reporting agencies. It appears that the
>agencies have been in flagrant violation of the law, and I applaud any
>effort to get them to change their practices. I think, however, that I
>should not serve as your expert. I don't think I could be as
>supportive of the settlement as you would need.

>

>Perhaps we'll have another chance to work together in the future.

>

>Elizabeth Warren

EXHIBIT H

Legal Tabs Co. 1-800-322-3022

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EXHIBIT H

Lee A. Sherman

From: Lee A. Sherman
Sent: Wednesday, September 06, 2006 8:40 AM
To: 'Elizabeth Warren'
Subject: RE: class action

Elizabeth:

Thank you for your e-mail and I am truly disappointed that we will not be working together on this case. Moreover, I thank you for your time and input to date. I truly believe that the settlement we reached with Trans Union is a good and fair one that will ultimately be approved by the Court.

In any event, while I understand that you are no longer willing to serve as our expert, your message is unclear as to what you told the NCLC in response to their inquiry. More to the point, it is certainly our position that we have consulted with you, shared information with you and believed we retained you for this matter. As such, we trust that you advised them that you would also not be able to serve as an expert on their behalf in this matter. Please confirm.

Sincerely,

Lee Sherman

-----Original Message-----

From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
Sent: Tuesday, September 05, 2006 6:10 PM
To: Lee A. Sherman
Subject: RE: class action

Lee,

I'm sorry, but we've just started classes, so things are pretty hectic right now.

I had a call from friends working with the National Consumer Law Center. They didn't know I had talked with you, and they wanted me to talk with me about being their expert. Their concerns about the settlement, along with the high regard I have for the NCLC, makes me too uneasy to commit to you as an expert.

I wanted you to know right away so that you would be wasting time waiting for me.

ew

At 11:14 AM 9/5/2006, you wrote:

>Dr. Warren:

>

>I just called and spoke with your assistant about this, but could you

>give me a call regarding your message when you get a chance. I am

>curious as to your decision and also about thoughts you have concerning

>my settlement.

>

>I appreciate your assistance.

>

>Lee Sherman

>

>-----Original Message-----

>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
>Sent: Monday, September 04, 2006 5:49 PM
>To: Lee A. Sherman
>Cc: rmabey@stutman.com
>Subject: class action
>
>
>Lee,
>
>I appreciate your invitation to join you as an expert in the pending
>litigation with the credit reporting agencies. It appears that the
>agencies have been in flagrant violation of the law, and I applaud any
>effort to get them to change their practices. I think, however, that I
>should not serve as your expert. I don't think I could be as
>supportive of the settlement as you would need.
>
>Perhaps we'll have another chance to work together in the future.
>
>Elizabeth Warren

EXHIBIT I

Legal Tabs Co. 1-800-322-3022

Recycled  Stock # EXA-5-B

EXHIBIT I

Lee A. Sherman

From: Elizabeth Warren [ewarren@law.harvard.edu]
Sent: Thursday, September 14, 2006 3:36 PM
To: Lee A. Sherman
Subject: RE: class action

Lee,

And I am on record with my position and intentions.

ew

At 11:08 AM 9/14/2006, you wrote:

>Elizabeth:

>

>My message was not intended as a threat or any attempt to "strong-arm"

>anyone. I merely wanted to be on record with our position and

>intentions on this issue, which I now am.

>

>Sincerely,

>

>Lee Sherman

>

>-----Original Message-----

>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]

>Sent: Thursday, September 14, 2006 7:00 AM

>To: Lee A. Sherman

>Subject: RE: class action

>

>

>Lee,

>

>Don't threaten me. You called to ask if I would serve as your expert.

>Asking the question does not give you any claim on me.

>

>I will offer expert reports when I think they are appropriate. You

>cannot strong-arm me either into writing such a report for you or

>withholding one from someone else.

>

>ew

>

>

>

>At 09:53 AM 9/11/2006, Lee A. Sherman wrote:

> >Elizabeth:

> >

> >Thank you for your response, though I am somewhat surprised to read

> >it.

> >

> >While I do not see the necessity of debating the points raised in

> >your message below at this time, please understand that I have a very

> >different take on the matter. Consequently, and with all due

> >respect, please be advised that if you should attempt to serve as an

> >expert on behalf of any other party in this matter, we will

> >immediately move for your disqualification. Please understand that I

> >do not make this statement as a threat, but rather to make my record

> >in writing of my intent, so there can be no claim that I was silent

> >on this issue.

> >

> >Sincerely,

> >

> >Lee Sherman

> >
> >-----Original Message-----
> >>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
> >>Sent: Friday, September 08, 2006 4:30 PM
> >>To: Lee A. Sherman
> >>Subject: RE: class action
> >
> >
> >>Lee:
> >
> >>I'm sorry this won't work out.
> >
> >>I am quite surprised to hear that you believe you have retained me.
> >>Our single telephone conversation ended with my making it quite clear
> >>that I wasn't sure if I was willing to serve as your expert and that
> >>I would talk with Ralph Mabey and get back to you later.
> >
> >>I have no present plans to serve as an expert for NCLC, but I am free
> >>to do so. If I decide that I want to serve as their expert, then I
> >>will do so.
> >
> >>ew
> >
> >
> >>At 12:40 PM 9/6/2006, Lee A. Sherman wrote:
> >>>Elizabeth:
> >>>
> >>>>Thank you for your e-mail and I am truly disappointed that we will
> >>>>not be working together on this case. Moreover, I thank you for
> >>>>your
> >>>
> >>>>time and input to date. I truly believe that the settlement we
> >>>>reached with
> >>>
> >>>>Trans Union is a good and fair one that will ultimately be approved
> >>>>by the Court.
> >>>
> >>>>In any event, while I understand that you are no longer willing to
> >>>>serve as our expert, your message is unclear as to what you told
> >>>>the NCLC in response to their inquiry. More to the point, it is
> >>>>certainly our position that we have consulted with you, shared
> >>>>information with you and believed we retained you for this matter.
> >>>>As such, we trust that you advised them that you would also not be
> >>>>able to serve as an expert on their behalf in this matter. Please
> >>>>confirm.
> >>>
> >>>>Sincerely,
> >>>
> >>>>Lee Sherman
> >>>
> >>>
> >>>
> >>>>-----Original Message-----
> >>>>>From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
> >>>>>Sent: Tuesday, September 05, 2006 6:10 PM
> >>>>>To: Lee A. Sherman
> >>>>>Subject: RE: class action
> >>>>>
> >>>>>
> >>>>>>Lee,
> >>>>>
> >>>>>>>I'm sorry, but we've just started classes, so things are pretty
> >>>>>>>hectic right now.
> >>>>>>
> >>>>>>>I had a call from friends working with the National Consumer Law
> >>>>>>>Center. They didn't know I had talked with you, and they wanted me
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> > >talk with me about being their expert. Their concerns about the
> > >settlement, along with the high regard I have for the NCLC, make me
> > >too
> >
> > >uneasy to commit to you as an expert.
> > >
> > >I wanted you to know right away so that you would be wasting time
> > >waiting for me.
> > >
> > >ew
> > >
> > >
> > >At 11:14 AM 9/5/2006, you wrote:
> > > >Dr. Warren:
> > > >
> > > >I just called and spoke with your assistant about this, but could
> > > >you
> > >
> > > >give me a call regarding your message when you get a chance. I
> > > >am curious as to your decision and also about thoughts you have
> > > >concerning
> > > >
> > > >my settlement.
> > > >
> > > >I appreciate your assistance.
> > > >
> > > >Lee Sherman
> > > >
> > > >-----Original Message-----
> > > >From: Elizabeth Warren [mailto:ewarren@law.harvard.edu]
> > > >Sent: Monday, September 04, 2006 5:49 PM
> > > >To: Lee A. Sherman
> > > >Cc: rmabey@stutman.com
> > > >Subject: class action
> > > >
> > > >
> > > >Lee,
> > > >
> > > >I appreciate your invitation to join you as an expert in the
> > > >pending litigation with the credit reporting agencies. It
> > > >appears that the agencies have been in flagrant violation of the
> > > >law, and I
> > >
> > > >applaud any effort to get them to change their practices. I
> > > >think,
> > >
> > > >however, that I
> > >
> > > >should not serve as your expert. I don't think I could be as
> > > >supportive of the settlement as you would need.
> > > >
> > > >Perhaps we'll have another chance to work together in the future.
> > > >
> > > >Elizabeth Warren

EXHIBIT J

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EXHIBIT J

Message
Lee A. Sherman

From: Mabey, Ralph R. [RMabey@Stutman.com]
Sent: Wednesday, September 06, 2006 10:27 AM
To: Lee A. Sherman
Cc: Weatherly, Carol
Subject: Trans Union Settlement

Lee,

For personal reasons only, I will be unable to act as an expert witness in this matter and therefore decline this engagement.

Thank you for your interest.

Cordially,

Ralph R. Mabey
Stutman, Treister & Glatt, P.C.
185 South State Street
Suite 1300
Salt Lake City, Utah 84111-1537
801-257-7976 (Salt Lake City)
310-228-5720 (Los Angeles)

This Internet e-mail contains confidential information which is intended only for the addressee and which may be privileged under applicable law. Do not read, copy or disseminate it if you are not the addressee. If you have received this message in error, please notify the sender immediately and delete it. Thank you.

10/27/2006

EXHIBIT K

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EXHIBIT K

INVOICE

March 08, 2006

To: Peter Recchia & Gino Pietro
Law Offices

E-Mailed to: Peter Recchia, Gino Pietro & Greg Sullivan

EXPERT WITNESS

Acosta v. Trans Union

Document Review, Consulting, Declaration

February 23-24, 2005

2 Hours @ \$250 Per Hour ---

\$500

TOTAL DUE **\$500**

PLEASE REMIT TO: PRIVACY TIMES
P.O. BOX 302
CABIN JOHN, MD 20818
301 229 7002 PHONE
301 229 8011 FAX
evan@privacytimes.com

EXHIBIT L

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EXHIBIT L

Douglas Wright

From: Greg Sullivan [gpsesq@gmail.com]
Sent: Thursday, October 26, 2006 3:48 PM
To: Douglas Wright; Lee A. Sherman; Attnyrecchia@aol.com; Gino
Subject: Fwd: Tentative Settlement of Trans Union Class Action

----- Forwarded message -----

From: **Evan Hendricks** <evan@privacytimes.com>
Date: Aug 29, 2006 11:25 AM
Subject: Re: Tentative Settlement of Trans Union Class Action
To: Greg Sullivan <gpsesq@gmail.com>

Hey Greg,

Could you tell Peter that I believe I'm still owed \$500 for a short affidavit or declaration I did earlier in the year.
(Invoice attached)

Evan Hendricks
www.PrivacyTimes.com
www.CreditScoresandCreditReports.com
(301) 229 7002

----- Original Message -----

From: Greg Sullivan
To: evan
Sent: Thursday, August 17, 2006 4:33 PM
Subject: Re: Tentative Settlement of Trans Union Class Action

Thanks for the response. Lee Sherman is the lead attorney in this case working along with Peter Recchia and Gino Pietro, with whom you are familiar. Lee would like to call you directly, after this introduction, to discuss your retainer and the specific requirements of your declaration in support of settlement of this class action case. We do not have an immediate deadline, but how soon will you be available to have a discussion with Lee? I have your cell phone number, your number while in Oregon, but please confirm with me your Maryland number. When will you be available for a telephone conversation with Lee Sherman?

Thanks, Greg

On 8/15/06, **evan** <evan@privacytimes.com> wrote:
Greg

I'm on vacation and only checking email every other day or so.

10/27/2006

Yes, please forward memo of understanding; if deadline is a ways off, then send it to my PO Box, as I'll be back 8/24; if the deadline is tight, make sure it arrives by Monday @; at the library computers I can't always download attachments

Evan Hendricks
c/o
820 NW Skyline Crest
Portland OR 97229
(503) 292 1926

Anything urgent, call my cell 202 365 0947 cell

Evan Hendricks
Privacy Times
PO Box 302
Cabin John MD 20818

or (FEDEX)

8321 Tomlinson Ave
Bethesda, MD 20817

- > Hello again Evan. We have reached a Memorandum of Understanding to settle
- > our Trans Union Class Action related to bankruptcy reporting. We wish to
- > retain you to prepare a declaration in support of our settlement, similar
- > to
- > the declaration you did in the South Carolina, Clark case.
- > Please advise what your fee is for this project. Provide us a retainer
- > agreement and, if agreeable, we will forward you a copy of our Memorandum
- > of
- > Understanding and fee and the time frame for our fairness and settlement
- > approval hearing at which time we will utilize your declaration.

EXHIBIT m

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EXHIBIT M

CADDELL & CHAPMAN
ATTORNEYS AT LAW
THE PARK IN HOUSTON CENTER
1331 LAMAR, SUITE 1070
HOUSTON, TEXAS 77010-3027

MICHAEL A. CADDELL
BOARD CERTIFIED CIVIL TRIAL LAW
TEXAS BOARD OF LEGAL SPECIALIZATION
mac@caddellchapman.com

TEL (713) 751-0400
FAX (713) 751-0906
www.caddellchapman.com

October 2, 2006

BY EMAIL

Mr. Lee A. Sherman
Callahan, McCune & Willis, APLC
111 Fashion Lane
Tustin CA 92780-3397

Re: White/Hernandez

Dear Lee:

I have known and worked with Evan Hendricks for several years. He was my retained expert in the *Clark* FCRA litigation in South Carolina back in 2003. We have worked with him on other cases as well, as have other members of our team, particularly Len Bennett.

I recently contacted Evan to discuss the *White/Hernandez* litigation with him. He advised me that he had done two discrete projects for your team on *Pike* and *Acosta*. While he did not feel that he had been placed on general retainer with respect to those cases and was unclear as to whether you considered him a "retained expert" for those lawsuits (and setting aside the fact that the project he performed in *Acosta* must necessarily have been with respect to the state court proceeding, rather than the newly filed federal case), I advised him that we could not work with him or discuss the work that he had done on those cases without checking with you first.

We have not discussed with him your proposed settlement in *Pike* and *Acosta*, much less discussed any of the particulars of that proposed settlement with him. Furthermore, unless you advise us that you no longer require Evan's services in *Pike* and *Acosta*, we will not approach him to work with us on our own litigation against Trans Union and Equifax in this area. However, if you have concluded your work with Evan and no longer require his services, we would like to retain him as a consulting expert with respect to the *White/Hernandez* cases against Equifax and Trans Union. Please advise on that as soon as possible.

In the meantime, this is to place you on notice that we have retained Evan as an expert in the *White/Hernandez* cases against Experian (we only did so after confirming with him that he had not been retained by your group with respect to Experian, and that, indeed, he had never discussed Experian with any member of your group.) As I am sure you would want

October 2, 2006

Page 2

us to do with respect to Equifax and Trans Union—assuming you consider Evan to be a “retained expert” and wish to continue his status as such in *Pike* and *Acosta*—you should not discuss with Evan any of your thoughts or negotiations with Experian, nor query Evan concerning any of the communications we have had with him concerning our dealings with Experian.

Please do not hesitate to contact me if you have any questions concerning this issue. I felt it was important to bring this to your attention so there would be no misunderstanding.

Sincerely,

A handwritten signature in black ink that reads "Mike Caddell". The signature is written in a cursive, slightly slanted style.

Michael A. Caddell

MAC/vsh

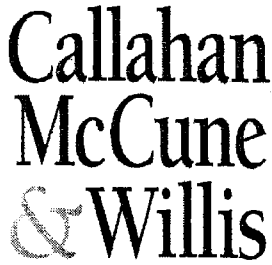
cc: Ms. Cynthia B. Chapman
Mr. George Y. Niño
Mr. Stuart Rossman
Mr. Dan Wolf
Mr. Charles Juntikka
Mr. Charles Delbaum
Mr. Len Bennett
Mr. Mitch Touns

EXHIBIT N

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EXHIBIT N



PETER M. CALLAHAN
LARRY N. WILLIS
ROBERT W. THOMPSON
O. BRANDT CAUDILL, JR.
SCOTT S. BLACKSTONE
NANCY J. DEPASQUALE-ERKER
RICHARD J. RITCHIE
NANCY E. POWER
COLRENA K. JOHNSON
NORMA S. MARSHALL
LEE A. SHERMAN
JAMES M. HANSEN
TONI KERN
KELLIE S. CHRISTIANSON

CHRISTOPHER J. ZOPATTI
MICHAEL C. ROGERS
THOMAS M. RUTHERFORD, JR.
LAURIE D. RAU
ANNETTE C. CLARK
DENISE M. CALKINS
EVETTE L. SMITH
JOAN E. TRIMBLE
KATHLEEN M. HARTMAN
JOHN W. FOX
JENNIFER L. CALLAHAN
DEAN B. JACOBSEN
LEE A. DIBELLO
CHARLES S. RUSSELL
KATHLEEN E. ALPARCE

MICHAEL SAN FILIPPO
ANGELA M. ROSSI
BROOKE P. FITZGERALD
TRISHA L. COZAD
DOUGLAS A. WRIGHT
ALISON L. ROTH
ANGELA PAK
BRYAN M. THOMAS
MATTHEW G. BROWN
AMIT T. BAHADORI
VIRGINIA S. ALSPAUGH
YVETTE N. SIEGEL

OF COUNSEL
GARRETT S. GREGOR
ADMINISTRATOR
KENNETH D. BERG
SCOTT M. McCUNE
(1948-1989)

October 4, 2006

VIA FACSIMILE AND U.S. MAIL

Mike Caddell, Esq.
CADELL & CHAPMAN
Attorneys at Law
The Park in Houston Center
1331 Lamar, Suite 1070
Houston, Texas 77010-3027

Re: *White/Hernandez/Acosta/Pike*

Dear Mr. Caddell:

We have now had a chance to review your correspondence of October 2, 2006 regarding our expert Evan Hendricks. Please allow this to serve as our response thereto and notice of our objection to your continued effort to tamper with our expert witnesses in this matter.

As you were aware, we retained Mr. Hendricks some time ago for the specific purpose of evaluating and rendering an opinion as to the fairness of the settlement reached in *Acosta* and later in *Pike*. Furthermore, our retention of Mr. Hendricks included telephone conferences, submission of materials to him for review, discussion of the facts of the case, discussion of the settlement, and discussion of the claims against all of the credit reporting agencies including the Federal matters. In fact, our dealings with him included our agreement to his billable rate and his actual performance of tasks related to this matter beyond that which could be referred to as "discrete projects". Consequently, we absolutely contend that Mr. Hendricks is our expert in this matter and that any attempt by you to retain him for any matter related to *Acosta* and/or *Pike* is inappropriate and objectionable. Furthermore, any attempt by you to try and claim that because the *Experian* matter is not part of the settlement, it is appropriate for you to try and retain our expert when you have already announced your intention to object to the settlement that we believe is in the best interest of the class in the related matters is flat out disingenuous.

Attn: Michael A. Caddell, Esq.
Re: *Acosta/Pike/White/Hernandez*
October 4, 2006
Page 2

Callahan
McCune
& Willis

In addition to the foregoing, we also take issue with your representation that you "have not discussed with him [our] proposed settlement in *Pike* and *Acosta*..." Specifically, when Mr. Recchia and Mr. Pietro contacted Mr. Hendricks to follow up on your letter, he advised that you had, among other things, "mentioned concerns" about the settlement. Hence, it seems to us that you have not only contacted our expert and attempted to retain him on a matter you know full well to be related, but you have also gone so far as to tamper with him even after you knew of his involvement with us.

In conjunction, it bears mention that the aforementioned conduct occurred after we specifically advised you of our objection to your previous tampering with Elizabeth Warren. As you recall, we had initially made contact with Ms. Warren, discussed the settlement with her, forwarded her the MOU and believed her to be retained only to later learn that a member of your team had subsequently (and without even advising us of the contact) contacted her, learned of her involvement with us, discussed the settlement with her and then asked her not to go forward as our expert.

Frankly, your conduct (and that of your teammates with regard to Ms. Warren) violates the rule set forth in *Erickson v Newmar Corp.* (9th Cir. 1996) 87 F.3rd 298, which prohibits ex parte contact with an opposing party's expert. In fact, we are currently in the process of discussing whether to immediately proceed with a motion to disqualify your entire team based on these actions. We will notify you shortly of our intentions in this regard, so that we can meet and confer before filing our motion, if necessary.

In the meantime, please consider this our formal objection to your attempted retention of Mr. Hendricks and our demand for your immediate dissociation from him with regard to any matter related to the pending FCRA matters before Judge Carter.

Sincerely,

Callahan, McCune & Willis, APLC



LEE A. SHERMAN

LAS:amp

EXHIBIT 0

Legal Tabs Co. 1-800-322-3022


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EXHIBIT O

Douglas Wright

From: Lee A. Sherman
Sent: Wednesday, October 25, 2006 12:50 PM
To: Douglas Wright
Subject: FW: expert

-----Original Message-----

From: Attnyrecchia@aol.com [mailto:Attnyrecchia@aol.com]
Sent: Tuesday, October 03, 2006 7:59 AM
To: evan@privacytimes.com
Cc: Lee A. Sherman
Subject: expert

Dear Evan,

I saw a copy of the letter sent by Michael Caddell concerning your status as an expert for our Federal cases vs TransUnion and Equifax and his hiring you for the Experian case.

It was my understanding that we had hired you to be a witness for our two cases. I will contact you via phone to confirm our status.

Peter Recchia

10/27/2006

EXHIBIT P



Douglas Wright

From: Evan Hendricks [evan@privacytimes.com]
Sent: Thursday, October 05, 2006 9:20 AM
To: Attnyrecchia@aol.com
Cc: pietrolaw@sbcglobal.net
Subject: BK Cases

Peter & Gino,

In our conversation yesterday, you asked that I disavow my work with the Cadell group on the Experian case. I have chosen not to do that, and to work on the Experian case for which I have been retained.

My sense from our conversation was that you would decline to retain me if I chose to work with the Cadell group. If my understanding is correct, I respect your decision. As I said yesterday, I have not read the Memo of Understanding or any other materials that might have been included in the package you sent. Please advise whether you prefer that I return those materials to you, or dispose of them.

It's always unfortunate when there are "competing classes." My strong preference is that all plaintiffs come together. My strong hope is that this will still happen in these BK cases.

Please feel free to call me if you have questions or would like to discuss this further. I enjoyed our earlier work together and my door is always open.

(I have a 12:30 conference call and 2pm TV interview today, Thursday)

Evan Hendricks
www.PrivacyTimes.com
www.CreditScoresandCreditReports.com
(301) 229 7002

10/27/2006

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3 COUNTY OF ORANGE)

4 I am employed in the County of Orange, State of California, I am over the age of 18 years
5 and not a party to the within action; my business address is 111 Fashion Lane, Tustin,
California.

6 On this date, I served the foregoing document described as:

7 **NOTICE OF MOTION AND MOTION TO DISQUALIFY COUNSEL FOR**
8 **PLAINTIFFS IN THE RELATED WHITE AND HERNANDEZ MATTERS;**
9 **MEMORANDUM OF LAW IN SUPORT THEREOF; DECLARATIONS OF**
LEE A. SHERMAN, PETER RECCHIA

10 Said document was served on the interested party or parties in this action by placing a
true copy thereof, enclosed in a sealed envelope, and addressed as noted below.

11 I am familiar with our firm's practice of collection and processing correspondence for
12 mailing. Under that practice it would be deposited with the U.S. Postal Service on that
13 same day with postage thereon fully prepaid at Tustin, California in the ordinary course
of business. I am aware that on motion of the party served, service is presumed invalid if
the postal cancellation date or postage meter date is more than one working day after the
date of deposit for mailing in this declaration.

14 XX (By Mail) I deposited such envelope in the mail at Tustin, California. The
15 envelope was mailed with postage thereon fully prepaid.

16 _____ (By Facsimile) In addition to regular mail, I sent this document via facsimile,
number(s) as listed on the attached mailing list.

17 _____ (By Personal Service) Such envelope was delivered by hand to the below
18 addressee.

19 _____ (By Overnight Mail) I arranged for such envelope was delivered to the following
addresses by overnight mail.

20 Executed on October 27, 2006, at Tustin, California.

21 I declare under penalty of perjury under the laws of the State of California that the above
22 is true and correct. I further declare that I am employed in the office of a member of the
bar of this court at whose direction the service was made.

23 
24 ANGELA M. PETERSON
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ALL COUNSEL MAILING LIST

Julia B. Strickland, Esq.
Stephen J. Newman, Esq.
Brian C. Frontino, Esq.
STROOCK & STROOCK & LAVAN LLP
2029 Century Park East, Suite 1800
Los Angeles, CA 90067-3086
Tel# (310) 556-5800
Fax# (310) 556-5959

Michael W. Sobol
Bill Lann Lee
LIEFF CABRASER HEIMANN &
BERNSTEIN LLP
275 Battery Street, 30th Floor
San Francisco, CA 94111-3339
Tel: (415) 956-1000
Fax: (415) 956-1008

Charles W. Juntikka
CHARLES JUNTIKKA & ASSOC.
11 West, 42nd Street, 12th Floor
New York, NY 10036
(212) 315-3755

Daniel Wolf
DANIEL WOLF LAW OFFICES
1220 N. Street, NW
Suite PH 2
Washington, DC 20005
(202) 772-1154

Mike Caddell
Cynthia B. Chapman
CADDELL & CHAPMAN
1331 Lamar, Suite 1070
Houston, TX 77010-3027
Tel: (713) 751-0400
Fax: (713) 751-0906

Kevin A. Dorse
Daniel J. McLoon
Michael G. Morgan
Scott Philip Shaw
JONES DAY
555 S. Flower Street, 15th Floor
Los Angeles, CA 90071-2300
(213) 489-3939

1 Thomas R. Malcolm
JONES DAY
2 3 Park Plaza, Suite 100
Irvine, CA 92614-6232
3 (949) 851-3939

4 Cindy D. Hanson
5 Craig E. Bertschi
Kali Wilson Beyah
6 Bradley J. Miller
KILPATRICK & STOCKTON
7 1100 Peachtree Street, Suite 2800
Atlanta, GA 30309-4530
8 Tel:(404) 815-6500
Fax: (404) 815-6555

9 Thomas P. Quinn, Jr.
10 NOKES & QUINN
450 Oceans Avenue
11 Laguna Beach, CA 92651
(949) 376-3055

12 Albert Finch
13 ERICKSEN ARBUTHNOT KILDUFF
DAY AND LINDSTROM
14 111 Sutter Street, Suite 575
San Francisco, CA 94101
15 (415) 362-7126

16 Stuart Rossman
Charles Delbaum
17 NATIONAL CONSUMER LAW CENTER
77 Summer Street, 10th Floor
18 Boston, MA 02110
(615) 542-8010

19 Leonard A. Bennett
20 Mathew Erausquin
CONSUMER LITIGATION ASSOC., PC
21 12515 Warwick Boulevard, Suite 201
Newport News, Virginia 23606
22 Fax: (757) 930-3662

23 Mitchell A. Toups
WELLER, GREEN, TOUPS &
24 TERRELL, LLP
Bank of America Tower
25 2615 Calder Street, Suite 400
Beaumont, TX 77702
26 Fax: (409) 832-8577